

NEWS & INSIGHTS

PA Supreme Court to decide whether employee retaliation claims could be filed under both whistleblower and human relations laws

BY: [STEPHEN J. FLEURY, JR.](#) | [INSIGHTS](#) | [LEGAL UPDATE](#)

DECEMBER 2, 2019



The Pennsylvania Supreme Court is set to decide whether employees covered under Pennsylvania's Whistleblower Law (PWL) and alleging adverse employment action for reporting discriminatory conduct by an employer may also bring suit under the Pennsylvania Human Relations Act (PHRA). Until the recent case of *Harrison v. Health Network*

Laboratories, such claims were limited to being filed only under the PHRA and its requisite agency filing requirements.

The court's decision in this case could enable aggrieved employees claiming retaliation to file not only with the Pennsylvania Human Relations Commission (PHRC) or the Equal Employment Opportunity Commission (EEOC), but to also simultaneously file in state court thereby potentially driving up employer costs and settlement values.

Employers covered by whistleblower law

Importantly, the PWL applies not only to employees of a "public body" (i.e. generally state and local governments, agencies and affiliated entities), but also to employees of for-profit and not-for-profit businesses that receive certain types of funding from the government. For example, hospitals have been held to be employers subject to the PWL. Additionally, construction companies providing services to state or municipal governments would also very likely be covered by the PWL.

Harrison v. Health Network Laboratories

In *Harrison v. Health Network Laboratories*, the plaintiff (Harrison) was employed as a manager by the defendant employer. Harrison received a complaint from a co-worker that she had been discriminated against by a supervisor of Indian descent. The supervisor was alleged to have openly disparaged and mistreated non-Indian employees. Harrison forwarded the discrimination complaint to upper-level management and was terminated shortly thereafter. Harrison alleges that she was terminated for calling attention to her co-worker's claim of discrimination.

Harrison filed a complaint in state court alleging a violation of the PWL. The employer successfully argued to the trial court that the PWL claim was pre-empted by the PHRA. The trial court dismissed the complaint because Harrison had not exhausted, or even pursued, a discrimination and retaliation claim with the PHRC or EEOC as is required under the PHRA.

On appeal, a three-judge panel of the Superior Court, in an unpublished opinion, vacated the portion of the trial court's order dismissing Harrison's PWL claim. The Superior Court distinguished between the underlying wrongdoing (i.e. the employer's alleged discrimination against Harrison's co-worker) and the retaliatory act applicable to her (i.e. her termination of employment). In so doing, the Superior Court held that Harrison's retaliation claim could proceed under the PWL independent of any potential PHRA claims that could have been asserted. The court also implicitly acknowledged that had Harrison pursued the appropriate administrative remedies under the PHRA, she may have been able to raise claims under both the PHRA and the PWL.

The employer appealed the Superior Court's ruling to the Pennsylvania Supreme Court. During recent oral argument, the justices seemed to express skepticism over the employer's argument that when alleged retaliation is based on an action prohibited by the PHRA, then the only remedy at law for the retaliation is under the PHRA and its requisite administrative filing requirements. A ruling from the court could come within the next few weeks.

Potential impact on employers

The Supreme Court's ruling is potentially significant to employers covered under the PWL. If an aggrieved employee is permitted to assert under both the PWL and PHRA an alleged retaliatory adverse employment action based upon underlying discriminatory conduct, that employee could potentially file not only an agency complaint, but also immediately file in state court. The result is that plaintiffs' counsel may attempt to leverage this two-front litigation track, and the attendant increased costs, to attempt to accelerate settlement negotiations and increase settlement demands.

Seek legal counsel

Employers should be quick to engage experienced employment litigation counsel as early as possible whenever they are considering an adverse employment action against an employee who may be likely to assert claims of discrimination and/or retaliation. Saxton & Stump attorneys [Stephen J. Fleury Jr., Esq.](#) and [Richard L. Hackman, Esq.](#) are available to further discuss how to cost-effectively manage these matters should they arise and how our [Labor and Employment Group](#) can help develop internal best practices designed to minimize the risks to employers.

Related People

[Stephen J. Fleury, Jr.](#)

Related Services and Industries

[Healthcare](#)
[Healthcare Litigation](#)
[Labor and Employment](#)